(1979) 08 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jur. Case No. 603 of 1979

Md. Yunus APPELLANT

Vs

The Inspector General of Registration and Others RESPONDENT

Date of Decision : 24-08-1979

Acts Referred:

Societies Registration Act, 1860 — Section 20, 3

Citation : AIR 1980 Patna 138 : (1980) PLJR 119

Hon'ble Judges : S. Sarwar Ali, Acting C.J.;R.P. Mandal, J

Bench : Division Bench

Advocate : S.S. Asghar Hussain and S.R. Ghosal, for the Appellant; K.P. Singh, Standing Counsel No. 4 and R.N. Sharma, Jr. Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. In this application the petitioner prays for quashing of the certificate of registration issued to the society known as Anjuman Ahle Hadith, Madhupur (the ''Anjuman'') u/s 3 of the Societies Registration Act, 1860 (hereinafter referred to as the ''Act''). The signatories to the memorandum of association a copy whereof is Annexure 4, have been made parties. Certain other reliefs also are claimed. But those reliefs which relate to private dispute between the parties, can neither be adjudicated upon nor any relief given in relation thereto. We are, therefore, confining our judgment to the contention whether the registration of the society aforesaid was in accordance with law.

2. The Society was registered in the year 1967. There is no doubt that there is a belated challenge to the registration. But the circumstance in which the challenge has been made has been explained in para 15 of the writ application. In view of the explanation given therein and in the view that we are taking that the registration of the society was without jurisdiction we think that it would be proper to entertain the writ application and not defeat the petitioner only on the ground of delay.

3. It is now necessary to refer first to some of the provisions of the Act. The long title is : "An Act for the Registration of Literary, Scientific and Charitable Societies". The preamble states that provision should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, the diffusion of political education, or for charitable purposes. Section 1 of the Act states that:

"Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any purpose as is described in Section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar of Joint Stock Companies form themselves into a society under this Act."

Section 2 of the Act deals with the memorandum of association that has to be filed for the purpose of registration. The memorandum has to contain the objects of the society. Section 20 is as follows:--

"The following societies may be registered under this Act:

"Charitable Societies, the military orphan funds or societies established at the several presidencies of India, Societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs."

It would be thus seen in the context of the present controversy that unless the society which has been registered could be said to be a society for charitable purpose or a charitable society the registration could not have been made under the provisions of the Act.

4. Section 20 has been subject-matter of interpretation in Khaji Muhammad Hussain Sahib v. Majiday Mahmood Jamait Managing Committee (AIR 1940 Mad 167) on which reliance was placed on behalf of the contesting respondent. The ratio of this decision, is that if a society is formed for certain purposes the paramount object being charitable, then the mere fact that some religious objects are also included amongst the enumerated objects would not mean that the society is not for charitable purposes. The wider question whether religious purpose is a charitable purpose and whether a society formed for such a purpose would be a charitable society within the meaning of the Act was not decided in that case.

5. At this stage it would be necessary to examine the memorandum of association in order to determine whether the paramount object of the society is charitable, for, if it is, then the decision in Md. Hussain''s case would be applicable. If it is not, then in this, we would have to decide the wider question which was left open in Md. Hussain''s case.

6. We would, therefore, refer to the memorandum of association, Clause 3 of the said memorandum of association gives the aims and objects of the Anjuman (Society). The first three objects as mentioned is Clause 3 are as follows:--

"(a) The management, supervision and control of the mosque popularly known as (i) Masjid Ahle Hadith, Madhupur, Bazar, and (ii) Ahle-Hadith Idgah situated near Madhupur Municipal Office are vested in the Anjuman,

(b) The supervision and control of (iii) the existing Madrasa Islamia -- virtually situated within the very premises of the above-mentioned Masjid Ahle Hadith while founded, established and finally managed by persons of Ahle-Hadith section of Madhupur are also vested in the Anjuman.

(c) The management, supervision and control of the assets and properties, both moveable and Immovable of the above-mentioned 3 institutions, namely (i) Masjid Ahle-Hadith, (ii) Ahle-Hadith Idgah and (iii) Madrasa Islamia. Madhupur are also vested in this parent Association."

Thereafter there are other objects which are of general utility or which may be construed to be charitable objects. But it has to be observed that the first three objects as quoted above are the main and predominant objects of the society, and these are religious in character. The first is the supervision and control of Mosque and Idgah. The second is supervision and control of existing Madrasa, situated within the premises of the said Mosque, and the last is supervision and control of assets and properties relating to the aforementioned three institutions, namely, Masjid, Idgah and the Madrasa. It could be said with some justification that the Madrasa, although situated inside the Masjid, may not be a purely religious institution. Nevertheless the management and supervision of the Masjid and Idgah are purely religious purposes and, in our view, they are the predominant purposes so far as the memorandum of association aforesaid is concerned. This necessarily takes us to the consideration of the question whether when the predominant purpose of a society is religious and not charitable, can it be said to be a society established for charitable purposes within the meaning of the Act.

7. Anjuman Islamia of Muttra v. Nasir-Ud-Din ILR 1906 All 384) has taken the view that a religious purpose is a charitable purpose, and a society for religious purpose would ordinarily be a society for charitable purpose. Secondly, religious society which had for its objects the control and management of, and the protection of the property appertaining to, a certain public mosque, was a society which might legally be registered under the provisions of the Societies Registration Act, 1860. In Md. Hussain''s case (supra), although, as already stated, the question was not finally decided there is reference to Act 21 of 1860 and it was observed that in that Act and in some earlier legislation the words ''Public'' and ''Pious'' were meant to connote both religious and charitable institution. Reference was also made to the well known case of the Commissioners for Special Purposes of the Income Tax v. John Frederick Pemsel

((1891) AC 531). In that case dealing with the concept of charitable purpose in the relevant Income Tax Act it was held that:

"Charity in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community not falling under any of the preceding heads."

Assuming that "charity" in the legal sense has the same meaning in India as affirmed in Pemsel''s case in England, the question still remains whether in the Act the expression has been used in the said legal sense.

8. In our view, in interpreting the expressions ''charitable purpose or charitable society'', we have to take note of the general scheme of the Act and the objects which were sought to be attained. We have already referred to the long title and the preamble. Both of them indicate that the purpose of legislation is the registration of societies which have as their aim general public benefit. To promote literature, science, fine arts etc. are all matters of general public benefit and are not confined to any religious denomination. In the context and the setting in which the expressions charitable purpose or charitable society appear we are inclined to hold that the expressions must be given a meaning which is more in consonance with the general object of the Act. A greater indication is available in Section 20 itself. The section has already been quoted. It would be observed that the numerous objects which have been enumerated therein have no reference to any religious institutions of religion. They are all matters of genera! public benefit. It is a well-established rule of construction that the expressions used in an enactment take their meaning and colour from the context in which they are used.

9. Thus, we are of the view, that the expression ''charitable purpose'' must be a purpose which has some element of general public benefit and not a religious purpose. We, therefore, respectfully take a view different from what has been taken in Anjuman Islamia''s case (supra).

10. The line of reasoning which seems to have found favour with the learned Judges who decided Md. Hussain''s case (supra) is that in several statutes dealing with the endowment the expression charitable and religious were thought to be synonymous. This, in our view, would not be helpful in interpreting the expression ''charitable purposes'' as used in the Societies Registration Act. The purpose of law of endowment is completely different from the purpose of registration as contemplated in the Societies Registration Act. We may also usefully refer to the decision of the Supreme Court in Fazlul Rabbi Pradhan Vs. State of West Bengal, where it was pointed out that in the context of the legislation in question that charitable and religious purpose are two different concepts and are not overlapping. It was observed that the provision for the members of the family of wakf may be a religious or pious act in Mohammedan Law, but it could not be held to be a charitable object even according to the

Mohamedan Law. We are only mentioning this case to show that the concept as now adopted makes a clear distinction between religious purpose and charitable purpose. We are, therefore, of the view that the expression charitable purpose as used in the Societies Registration Act does not embrace purposes which are religious or predominantly religious. If that be the correct view of law there cannot be any doubt that the Inspector General of Registration had no jurisdiction to register the Society in question u/s 3 of the Act.

11. In the result, this application is allowed, the registration of the society u/s 3 of the Societies Registration Act is quashed. It is, however, made clear that our decision does not affect the rights of the parties, if any, in respect of the disputed properties. We also clarify that it would be open to the parties concerned to file application under the provisions of the Act provided the application fulfils the requirement of law.

